



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2011 REGULAR SESSION

HOUSE BILL NO. 221

FRIDAY, FEBRUARY 11, 2011

The following bill was reported to the Senate from the House and ordered to be printed.

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ELAINE N. WALKER
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Kinsolving

1 AN ACT relating to grain.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 251.451 is amended to read as follows:

- 4 (1) Each warehouseman shall file with the department a surety bond issued by a surety
 5 company authorized to transact business within the Commonwealth of Kentucky,
 6 payable to the Commonwealth with the Commissioner as trustee. A warehouseman
 7 may file with the department, in lieu of a surety bond, a certificate of deposit
 8 payable to the Commissioner, as trustee, an irrevocable letter of credit on forms
 9 provided by the Commissioner, or, upon approval by the Commissioner, a
 10 warehouse receipt for temporary surety until permanent surety is issued by a surety
 11 company. The principal amount of the certificate, letter of credit, or temporary
 12 surety shall be the same as that required for a surety bond under this section, and the
 13 interest, if any, shall be made payable to the purchaser. The amount of the bond for
 14 a warehouseman shall be established by administrative regulation, but in no event,
 15 except as otherwise authorized by this section, shall the sum be less than twenty-
 16 five cents (\$0.25) per bushel of the total maximum bushel capacity of the
 17 warehouse or twenty-five thousand dollars (\$25,000)~~[ten thousand dollars~~
 18 ~~(\$10,000)]~~, whichever is greater, not to exceed one million dollars (\$1,000,000).
- 19 (2) The bond shall be conditioned on the faithful performance of duties as an operator
 20 and the full and unreserved compliance with the laws of this state and any
 21 administrative regulations promulgated by the department, so that the depositors
 22 holding warehouse receipts, contracts, or other documented evidence of stored grain
 23 may receive the benefit of the bond. The aggregate liability of the surety to all
 24 depositors shall in no event exceed the sum of the bond. Neither the issuance of
 25 warehouse receipts by a warehouseman to himself for grain owned in whole or in
 26 part by him, the commingling of grain owned by the warehouseman with grain
 27 stored for others, or any violation by a warehouseman of KRS 251.420 to 251.510

1 or of the administrative regulations promulgated by the department shall constitute a
 2 defense in any action brought upon any bond, and all such bonds shall so provide.
 3 Maximum capacity of a warehouse shall be determined by dividing the cubic
 4 volume of all bins by two thousand one hundred fifty and forty-two one hundredths
 5 (2,150.42) cubic inches. The bond shall be kept in force at all times while the
 6 operator is conducting a warehouse. Failure to keep the bond in force shall be cause
 7 for revocation of the license and subjects the warehouseman to the criminal penalty
 8 provided in KRS 251.990. Each bond shall contain a provision that it may not be
 9 canceled by either the surety or the principal except upon sixty (60) days' notice in
 10 writing to the department at its offices in Frankfort. The notice shall not affect the
 11 liability accrued or that which may accrue under the bond before the expiration of
 12 the sixty (60) days. The department may require additional bond where the assets of
 13 any warehouseman appear insufficient, when compared to his storage obligations,
 14 or to meet the bond requirements of the United States or any agency or corporation
 15 controlled by the United States when they have a contract for storage with the
 16 warehouseman. The additional bond shall be a dollar amount equal to the
 17 insufficiency. Failure to post an additional bond shall constitute grounds for
 18 suspension or revocation of a license issued under KRS 251.430.

19 ➔Section 2. KRS 251.720 is amended to read as follows:

- 20 (1) Any person engaged in the business of buying grain from producers for resale,
 21 milling, or processing shall first procure a license from the department as required
 22 by the board before transacting business. The license shall expire on June 30 and
 23 shall be renewed annually by August 1. The annual license fee shall be based on the
 24 total annual volume handled as follows:

- 25 (a) From zero to five thousand nine hundred ninety-nine (5,999) bushels, seventy-
 26 five dollars (\$75);
 27 (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine

1 (99,999) bushels, one hundred fifty dollars (\$150);

2 (c) One hundred thousand (100,000) to one million nine hundred ninety-nine
3 thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars
4 (\$300);

5 (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand
6 nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars
7 (\$450);

8 (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand
9 nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or

10 (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).

11 (2) The fee for each license shall be used for carrying out the provisions of this chapter.

12 (3) Every person licensed as a grain dealer shall file with the department a surety bond
13 signed by the dealer as principal and by a responsible company authorized to
14 execute surety bonds within the Commonwealth of Kentucky. A grain dealer may
15 file with the department, in lieu of a surety bond, a certificate of deposit payable to
16 the Commissioner, as trustee, or an irrevocable letter of credit on forms provided by
17 the Commissioner. The principal amount of the certificate or letter of credit shall be
18 the same as that required for a surety bond under this section, and the interest, if
19 any, shall be made payable to the purchaser. The bond shall be a principal amount,
20 to the nearest one thousand dollars (\$1,000), equal to ten percent (10%) of the
21 aggregate dollar amount paid by the dealer to producers for grain purchased from
22 them during the dealer's last completed fiscal year, or in the case of a dealer who
23 has been engaged in business as a grain dealer for less than one (1) year or who has
24 not previously been engaged as a grain dealer, ten percent (10%) of the estimated
25 aggregate dollar amount to be paid by the dealer to producers for grain purchased
26 from them during the next fiscal year. The bond shall not be less than twenty-five
27 thousand dollars (\$25,000) nor more than one million dollars (\$1,000,000), except

1 as otherwise authorized by this section.

- 2 (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers
3 for grain purchased, or when he determines that the grain dealer does not have a
4 sufficient net worth to meet his financial obligations, require a grain dealer to post
5 an additional bond in a dollar amount equal to the insufficiency or shall require an
6 additional certificate of deposit or an irrevocable letter of credit equal to the
7 insufficiency, as deemed appropriate by the Commissioner. Failure to post the
8 additional bond or certificate of deposit or an irrevocable letter of credit constitutes
9 grounds for suspension or revocation of a license issued under this section.
- 10 (5) The bond or additional bond shall be made payable to the Commonwealth of
11 Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain
12 dealer's faithful performance of his duties as a grain dealer and his compliance with
13 this section. It shall be for the use and benefit of any producer from whom the grain
14 dealer may purchase grain and who is not paid by the grain dealer, and shall not be
15 canceled, except upon at least sixty (60) days' notice in writing to the department. In
16 no event shall the total aggregate liability of a surety exceed the face amount of its
17 bond.
- 18 (6) An incidental grain dealer whose total purchases of grain from producers during any
19 fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand
20 dollars (\$250,000) may satisfy the bonding requirements of this section by filing
21 with the department a bond, certificate of deposit, or an irrevocable letter of credit
22 at the rate of one thousand dollars (\$1,000) for each ten thousand dollars (\$10,000)
23 or fraction of ten thousand dollars (\$10,000) with a minimum bond, certificate of
24 deposit, or an irrevocable letter of credit of five thousand dollars (\$5,000), and a
25 current financial statement.
- 26 (7) Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter
27 of credit and to keep the bond, certificate of deposit, or an irrevocable letter of

1 credit in force or to maintain assets adequate to assure payment to producers for
2 grain purchased from them shall be grounds for the suspension or revocation of a
3 license issued under this section.

4 (8) When the Commissioner has determined that a grain dealer has defaulted payment
5 to producers for grain which he has purchased from them, the Commissioner shall
6 determine, through appropriate legal procedures, the producers and the amount of
7 defaulted payment, and, as trustee of the bond, shall immediately after the
8 determination call for the dealer's surety bond or bonds to be paid to him for
9 distribution to those producers who should receive the benefits. Should the
10 defaulted amount owed producers be less than the principal amount of the bond or
11 bonds, then the surety shall be obligated to pay only the amount of the default.

12 (9) Any grain dealer who is also in the business of storing grain and is a warehouseman
13 as defined in KRS 251.610 may be exempted from the licensing fee and bonding
14 requirements of KRS 251.451 as long as his storage capacity and storage
15 obligations are considered in formulating his grain dealer bond requirement.

16 (10) The department may refuse to issue a license to any applicant or revoke the existing
17 license of one who furnishes false or misleading information or conceals a material
18 fact on the application or other supporting documents, has been convicted of fraud
19 or deceptive practice, is currently adjudicated incompetent by a court of competent
20 jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1) or fails to
21 post additional surety to cover the deficiency, or for other good cause shown. Any
22 individual denied a license for these reasons shall be given written notice within
23 thirty (30) days of receipt of application. Any applicant who is denied a license or
24 has had his license revoked and feels he has been aggrieved may request a hearing
25 by writing to the Commissioner of Agriculture. Upon request, a hearing shall be
26 conducted in accordance with KRS Chapter 13B.

27 (11) All applications for a grain dealer license shall be accompanied by a current

1 financial statement, or an irrevocable letter of credit from a financial institution.

2 (12) (a) A grain dealer license shall become invalid upon the cessation of operations,
3 change of partners in a partnership, change of corporate structure of a
4 corporation, sale, or failure to remit license fees or fines. Licensed grain
5 dealers shall immediately notify the department as to any changes and shall
6 surrender the invalid license to the department. In the case of a successor, the
7 successor shall apply for a new license.

8 (b) If there is a cessation of operations or sale, the department, when deemed
9 appropriate, may cause an audit and examination to be made. In this case, all
10 records required in this chapter shall be available to the department until the
11 department is satisfied that all obligations have been met.

12 (13) In addition to the other provisions required by this section, any person who is
13 engaged in the business of buying grain from producers and who purchases or takes
14 title to grain valued at more than one million dollars (\$1,000,000) within a calendar
15 month shall:

16 (a) Notify the department, in writing, by submitting a detailed position report
17 outlining the:

- 18 1. Type of grain;
- 19 2. Quantity of each grain, in bushels;
- 20 3. Disposition of the grain, whether paid, forward price contracted, or
21 other; and
- 22 4. Aggregate value of the grain purchased within the calendar month.

23 The report shall be submitted to the department within ten (10) days following
24 the close of the calendar month. Failure to submit the report may result in the
25 revocation of the person's license;

26 (b) Upon request of the department, submit a balance sheet on a form provided by
27 the department, current through the end of the calendar month. Additional

1 surety shall be required, on a dollar-for-dollar basis, if the total value of
2 purchases of grain exceeds the combined value of the licensee's net worth and
3 existing surety. If the licensee has an asset-to-liability ratio falling below one
4 to one (1:1) or has outstanding payables to producers, other than legitimate
5 forward price contracted grain, over thirty (30) days due and exceeding one
6 million dollars (\$1,000,000), the licensee's license shall be suspended until the
7 deficit is corrected; and


- 8 (c) Be placed on an accelerated audit schedule as determined by the department.
9 If, in the determination of the department, the licensee cannot meet a
10 minimum asset-to-liability ratio of one-half to one (0.5:1), the department
11 shall revoke the license. The department shall also place liens on licensee
12 assets up to the amount of indebtedness to producers. If the department
13 determines the licensee is insolvent, the Commissioner shall have the power
14 to seize assets up to the value of the indebtedness to producers.



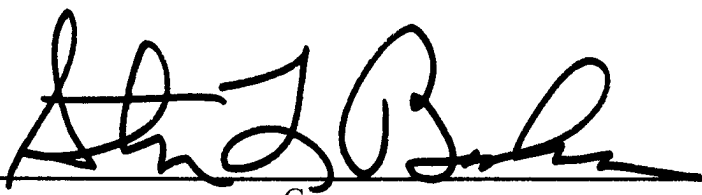
Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date March 15, 2011